

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

## ASSEMBLY BILL

No. 329

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**Introduced by Assembly Member Feuer**

February 18, 2009

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An act to amend Sections 1923.2 and 1923.5 of, and to add ~~Chapter 9 (commencing with Section 1924) to Title 4 of Part 4 of Division 3 of, Section 1923.8 to~~, the Civil Code, relating to reverse mortgages.

### LEGISLATIVE COUNSEL'S DIGEST

AB 329, as amended, Feuer. Reverse mortgages.

Existing law defines and regulates reverse mortgage loans and provides a disclosure notice that a lender must provide an applicant, which informs the applicant that a reverse mortgage is a complex financial arrangement and advises the applicant of the wisdom of seeking financial counseling before entering the agreement. *Existing law prohibits a lender from referring a borrower to anyone for the purchase of an annuity.* Existing law requires a lender to refer a prospective borrower to a housing counseling agency for counseling, as specified, prior to accepting a final and complete application for a reverse mortgage or assessing any fees.

This bill would enact the Reverse Mortgage Elder Protection Act of 2009. The bill would prohibit a lender *or any other person who participates in the origination of the mortgage from participating in, being associated with, or employing any party that participates in or is associated with any other financial or insurance activity, as provided.* *This bill would also prohibit a lender or any other person who participates in the origination of the mortgage from referring a prospective borrower to a counseling agency, or paying any counseling*

~~service fees without first informing the prospective borrower in writing that this may create a conflict of interest. The bill would require a lender to disclose to the prospective borrower in writing any other payment arrangements or business affiliations between the lender and a counseling agency. anyone for the purchase of other financial or insurance products.~~ The bill would require the lender to provide the prospective borrower with a list of ~~all~~ *not fewer than 10* nonprofit counseling agencies in the state that have been approved by the United States Department of Housing and Urban Development for counseling, *as provided*. The bill would grant borrowers the right to cancel a reverse mortgage within 30 days for any reason and would require a lender to provide a notice to this effect.

The bill would also provide that any person who offers, sells, or arranges the sale of a reverse mortgage to ~~an elder, as defined, owes to that elder a fiduciary duty, including the duty to act in the best interest of the elder, with the utmost care, honesty and undivided loyalty, diligence, and good faith toward the elder.~~ The bill would provide a list of criteria for a court to consider when determining if the duty has been breached. ~~The bill would provide that a person who breaches this fiduciary duty is liable to the borrower for any damages proximately caused by the breach of fiduciary duty, and would provide a prevailing plaintiff attorney's fees and court costs.~~ *a prospective borrower owes to that prospective borrower a duty of honesty, good faith, and fair dealing. This bill would require any person who offers, sells, originates, or arranges the sale of a reverse mortgage to provide the prospective borrower with a written checklist, signed by the prospective borrower and maintained by the lender, acknowledging the borrower has considered various factors, as provided. This bill would also require the lender to submit a written explanation enumerating the concerns they have as to the suitability of the reverse mortgage for the prospective borrower, as provided.*

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. This act shall be known as the Reverse Mortgage
- 2 Elder Protection Act of 2009.
- 3 SEC. 2. The Legislature finds and declares the following:

1 (a) A reverse mortgage is a loan that allows a homeowner to  
2 convert home equity into tax-free cash payments. More than 90  
3 percent of all reverse mortgages are obtained through the Home  
4 Equity Conversion Mortgage (HECM) program sponsored by the  
5 United States Department of Housing and Urban Development.  
6 Many senior citizens use reverse mortgage payments to supplement  
7 retirement income or pay medical expenses. Although the HECM  
8 program has been in existence since 1989, the program has seen  
9 rapid growth only in the past few years. As the population ages,  
10 this growth rate is expected to accelerate. The growth rate is also  
11 expected to increase as sales agents and lenders turn from the  
12 declining subprime and conventional mortgage market to the  
13 rapidly growing market for reverse mortgages.

14 (b) According to the American Association of Retired Persons  
15 (AARP) and other senior citizen groups, reverse mortgages are  
16 often a valuable financial tool for senior citizens who are “equity  
17 rich but cash poor.” However, senior groups also note that the  
18 rapid expansion of reverse mortgages has been accompanied by  
19 aggressive marketing and reports of abuse, especially when reverse  
20 mortgages are marketed along with annuities, long-term life  
21 insurance, or other financial investment products. Because reverse  
22 mortgages erode equity in what is typically the primary asset of  
23 most senior citizens, the AARP recommends that senior citizens  
24 should weigh all alternatives before considering a reverse mortgage.  
25 The AARP strongly advises against using the proceeds of a reverse  
26 mortgage for the purchase of annuities or other financial  
27 investments, since the high cost of obtaining a reverse mortgage  
28 often exceeds any likely returns.

29 (c) As a number of recent lawsuits and media reports in  
30 California make clear, the inappropriate marketing of reverse  
31 mortgages and ancillary financial products to senior citizens is  
32 growing, often creating substantial loss in personal estates and  
33 home equity. Existing law currently provides little recourse for  
34 senior citizens who ill-advisedly, and without full understanding,  
35 purchased an otherwise legitimate product. In enacting the Reverse  
36 Mortgage Elder Protection Act of 2009, it is not the intent of the  
37 Legislature to discourage the use of reverse mortgages, which  
38 often provide substantial benefits to senior citizens. Rather,  
39 anticipating the continued rapid growth in the reverse mortgage  
40 market, the Reverse Mortgage Elder Protection Act of 2009 seeks

1 to ensure that senior citizens will make informed decisions and  
2 that persons who offer, sell, or arrange the sale of reverse  
3 mortgages to senior citizens will act in the best interest of a  
4 sometimes vulnerable population.

5 SEC. 3. Section 1923.2 of the Civil Code is amended to read:

6 1923.2. A reverse mortgage loan shall comply with all of the  
7 following requirements:

8 (a) Prepayment, in whole or in part, shall be permitted without  
9 penalty at any time during the term of the reverse mortgage loan.  
10 For the purposes of this section, penalty does not include any fees,  
11 payments, or other charges that would have otherwise been due  
12 upon the reverse mortgage being due and payable.

13 (b) A reverse mortgage loan may provide for a fixed or  
14 adjustable interest rate or combination thereof, including compound  
15 interest, and may also provide for interest that is contingent on the  
16 value of the property upon execution of the loan or at maturity, or  
17 on changes in value between closing and maturity.

18 (c) A reverse mortgage may include costs and fees that are  
19 charged by the lender, or the lender's designee, originator, or  
20 servicer, including costs and fees charged upon execution of the  
21 loan, on a periodic basis, or upon maturity.

22 (d) If a reverse mortgage loan provides for periodic advances  
23 to a borrower, these advances shall not be reduced in amount or  
24 number based on any adjustment in the interest rate.

25 (e) A lender who fails to make loan advances as required in the  
26 loan documents, and fails to cure an actual default after notice as  
27 specified in the loan documents, shall forfeit to the borrower treble  
28 the amount wrongfully withheld plus interest at the legal rate.

29 (f) The reverse mortgage loan may become due and payable  
30 upon the occurrence of any one of the following events:

31 (1) The home securing the loan is sold or title to the home is  
32 otherwise transferred.

33 (2) All borrowers cease occupying the home as a principal  
34 residence, except as provided in subdivision ~~(h)~~ (g).

35 (3) Any fixed maturity date agreed to by the lender and the  
36 borrower occurs.

37 (4) An event occurs which is specified in the loan documents  
38 and which jeopardizes the lender's security.

39 (g) Repayment of the reverse mortgage loan shall be subject to  
40 the following additional conditions:

1 (1) Temporary absences from the home not exceeding 60  
2 consecutive days shall not cause the mortgage to become due and  
3 payable.

4 (2) Extended absences from the home exceeding 60 consecutive  
5 days, but less than one year, shall not cause the mortgage to become  
6 due and payable if the borrower has taken prior action which  
7 secures and protects the home in a manner satisfactory to the  
8 lender, as specified in the loan documents.

9 (3) The lender's right to collect reverse mortgage loan proceeds  
10 shall be subject to the applicable statute of limitations for written  
11 loan contracts. Notwithstanding any other provision of law, the  
12 statute of limitations shall commence on the date that the reverse  
13 mortgage loan becomes due and payable as provided in the loan  
14 agreement.

15 (4) The lender shall prominently disclose in the loan agreement  
16 any interest rate or other fees to be charged during the period that  
17 commences on the date that the reverse mortgage loan becomes  
18 due and payable, and that ends when repayment in full is made.

19 (h) The first page of any deed of trust securing a reverse  
20 mortgage loan shall contain the following statement in 10-point  
21 boldface type: "This deed of trust secures a reverse mortgage loan."

22 (i) A lender *or any other person that participates in the*  
23 *origination of the mortgage* shall not require an applicant for a  
24 reverse mortgage to purchase an annuity as a condition of obtaining  
25 a reverse mortgage loan. ~~A reverse mortgage lender or a broker~~  
26 ~~arranging a reverse mortgage loan shall not:~~

27 ~~(1) Offer an annuity to the borrower prior to the closing of the~~  
28 ~~reverse mortgage or before the expiration of the right of the~~  
29 ~~borrower to rescind the reverse mortgage agreement.~~

30 ~~(2) Refer the borrower to anyone for the purchase of an annuity~~  
31 ~~prior to the closing of the reverse mortgage or before the expiration~~  
32 ~~of the right of the borrower to rescind the reverse mortgage~~  
33 ~~agreement.~~

34 ~~(j) (1) Prior to accepting a final and complete application for~~  
35 ~~a reverse mortgage loan or assessing any fees, a lender shall~~  
36 ~~provide the prospective borrower with a list of all nonprofit~~  
37 ~~counseling agencies in the state that have been approved by the~~  
38 ~~United States Department of Housing and Urban Development for~~  
39 ~~counseling. The counseling shall meet the standards and~~

1 requirements established by the United States Department of  
2 Housing and Urban Development for reverse mortgage counseling.

3 ~~(2) A lender shall not refer a prospective borrower to a~~  
4 ~~counseling agency. The lender shall not pay any counseling service~~  
5 ~~fees without first informing the prospective borrower in writing~~  
6 ~~that this may create a conflict of interest. A lender shall disclose~~  
7 ~~to the prospective borrower in writing any other payment~~  
8 ~~arrangements or business affiliations between the lender and a~~  
9 ~~counseling agency.~~

10 *(j) The lender or any other person that participates in the*  
11 *origination of the mortgage shall not do either of the following:*

12 *(1) Participate in, be associated with, or employ any party that*  
13 *participates in or is associated with any other financial or*  
14 *insurance activity, unless the lender maintains procedural*  
15 *safeguards designed to ensure that individuals participating in*  
16 *the origination of the mortgage shall have no involvement with,*  
17 *or incentive to provide the prospective borrower with, any other*  
18 *financial or insurance product.*

19 *(2) Refer the prospective borrower to anyone for the purchase*  
20 *of an annuity or other financial or insurance product.*

21 *(k) Prior to accepting a final and complete application for a*  
22 *reverse mortgage the lender shall provide the borrower with a list*  
23 *of not fewer than 10 counseling agencies that are approved by the*  
24 *United States Department of Housing and Urban Development to*  
25 *engage in reverse mortgage counseling as provided in Subpart B*  
26 *of Part 214 of Title 24 of the Code of Federal Regulation. The*  
27 *counseling agency shall not receive any compensation, either*  
28 *directly or indirectly, from the lender or from any other person or*  
29 *entity involved in originating or servicing the mortgage or the sale*  
30 *of annuities, investments, long-term care insurance, or any other*  
31 *type of financial or insurance product.*

32 ~~(k)~~

33 *(l) A lender shall not accept a final and complete application*  
34 *for a reverse mortgage loan from a prospective applicant or assess*  
35 *any fees upon a prospective applicant without first receiving a*  
36 *certification from the applicant or the applicant's authorized*  
37 *representative that the applicant has received counseling from an*  
38 *agency as described in subdivision-(j) (k). The certification shall*  
39 *be signed by the borrower and the agency counselor, and shall*  
40 *include the date of the counseling and the name, address, and*

1 telephone number of both the counselor and the borrower.  
2 Electronic facsimile copy of the housing counseling certification  
3 satisfies the requirements of this subdivision. The lender shall  
4 maintain the certification in an accurate, reproducible, and  
5 accessible format for the term of the reverse mortgage.

6 ~~(l)~~

7 (m) A lender shall not make a reverse mortgage loan without  
8 first complying with, or in the case of brokered loans ensuring  
9 compliance with, the requirements of Section 1632, if applicable.

10 ~~(m)~~

11 (n) The borrower may rescind any reverse mortgage within 30  
12 days of execution by providing written notice to the lender. Any  
13 payments received in connection with the reverse mortgage shall  
14 be returned within 15 days of rescission.

15 SEC. 4. Section 1923.5 of the Civil Code is amended to read:

16 1923.5. No reverse mortgage loan application shall be taken  
17 by a lender unless the loan applicant has received from the ~~lender~~  
18 *lender, prior to receiving counseling*, the following plain language  
19 statement in conspicuous 16-point type or larger, ~~advising the~~  
20 ~~prospective borrower about counseling prior to obtaining the~~  
21 ~~reverse mortgage loan:~~

22  
23  
24 IMPORTANT NOTICE  
25 TO REVERSE MORTGAGE LOAN APPLICANT  
26

27 A REVERSE MORTGAGE IS A COMPLEX FINANCIAL  
28 TRANSACTION THAT PROVIDES A MEANS OF USING THE  
29 EQUITY YOU HAVE BUILT UP IN YOUR HOME, OR THE  
30 VALUE OF YOUR HOME, AS A SOURCE OF ADDITIONAL  
31 INCOME. IF YOU DECIDE TO OBTAIN A REVERSE  
32 MORTGAGE LOAN, YOU WILL SIGN BINDING LEGAL  
33 DOCUMENTS THAT WILL HAVE IMPORTANT LEGAL AND  
34 FINANCIAL IMPLICATIONS FOR YOU AND YOUR ESTATE.  
35 IT IS THEREFORE IMPORTANT TO UNDERSTAND THE  
36 TERMS OF THE REVERSE MORTGAGE AND ITS EFFECT.  
37 BEFORE ENTERING INTO THIS TRANSACTION, YOU ARE  
38 REQUIRED TO CONSULT WITH AN INDEPENDENT LOAN  
39 COUNSELOR. A LIST OF APPROVED COUNSELORS WILL  
40 BE PROVIDED TO YOU BY THE LENDER. YOU MAY ALSO

1 WANT TO DISCUSS YOUR DECISION WITH FAMILY  
2 MEMBERS OR OTHERS ON WHOM YOU RELY FOR  
3 FINANCIAL ADVICE. ~~YOU~~

4 *SENIOR CITIZEN ADVOCACY GROUPS ADVISE AGAINST*  
5 *USING THE PROCEEDS OF A REVERSE MORTGAGE TO*  
6 *PURCHASE AN ANNUITY OR RELATED FINANCIAL*  
7 *PRODUCTS. IF YOU ARE CONSIDERING USING YOUR*  
8 *PROCEEDS FOR THIS PURPOSE, YOU SHOULD DISCUSS*  
9 *THE FINANCIAL IMPLICATIONS OF DOING SO WITH YOUR*  
10 *COUNSELOR AND FAMILY MEMBERS.*

11 YOU ARE ENTITLED TO RESCIND (CANCEL) THIS  
12 REVERSE MORTGAGE TRANSACTION FOR ANY REASON  
13 WITHIN 30 DAYS FROM THE DAY YOU EXECUTE THE  
14 REVERSE MORTGAGE DOCUMENTS. THE RESCISSION  
15 MUST BE IN WRITING AND SENT BY CERTIFIED MAIL  
16 TO THE LENDER AT THE LENDER'S PLACE OF BUSINESS.

17 SEC. 5. Chapter 9 (commencing with Section 1924) is added  
18 to Title 4 of Part 4 of Division 3 of the Civil Code, to read:

19  
20 ~~CHAPTER 9. REVERSE MORTGAGE LENDER DUTIES TO ELDERS~~  
21

22 ~~1924. (a) In addition to any other obligation under law, any~~  
23 ~~person who offers, sells, or arranges the sale of a reverse mortgage,~~  
24 ~~as defined Section 1923, to an elder, owes to that elder a fiduciary~~  
25 ~~duty, including the duty to act in the best interest of the elder, with~~  
26 ~~the utmost care, honesty and undivided loyalty, diligence, and~~  
27 ~~good faith toward the elder, as well as the duty of timely and clear~~  
28 ~~disclosure of all material information that might reasonably affect~~  
29 ~~the elder's rights or interests or the elder's ability to receive the~~  
30 ~~intended benefit of the transaction.~~

31 ~~(b) In determining whether a person has breached the fiduciary~~  
32 ~~duty described in subdivision (a), the court shall evaluate whether~~  
33 ~~the person considered, and discussed with the borrower, the~~  
34 ~~following:~~

35 ~~(1) The age and life expectancy of the prospective borrower~~  
36 ~~and how this would impact the total annual loan cost.~~

37 ~~(2) The extent to which the prospective borrower's financial~~  
38 ~~needs would be better met by options other than a reverse~~  
39 ~~mortgage, including, but not limited to, less costly home equity~~



1 lines of credit, property tax deferral programs, or governmental  
2 aid programs.

3 ~~(3) Whether the borrower intends to use the proceeds of the~~  
4 ~~reverse mortgage to purchase annuities or other financial products~~  
5 ~~and the suitability of using reverse mortgage proceeds to purchase~~  
6 ~~the annuity or other financial products.~~

7 ~~(4) Whether a person or entity other than the lender~~  
8 ~~recommended the reverse mortgage for the purpose of purchasing~~  
9 ~~an annuity or other financial product.~~

10 ~~(5) Whether the lender complied with all requirements of~~  
11 ~~existing state and federal law and industry standards.~~

12 ~~(6) Any other factor that the court determines relevant in light~~  
13 ~~of the totality of the circumstances.~~

14 ~~(c) In addition to any other civil remedies provided by the law,~~  
15 ~~a person who breaches the fiduciary duty described in subdivision~~  
16 ~~(a) shall be liable to the borrower for any damages proximately~~  
17 ~~caused by the breach of fiduciary duty. A prevailing plaintiff shall~~  
18 ~~also be entitled to attorney's fees and court costs.~~

19 ~~(d) For purposes of this chapter, "elder" means any person 65~~  
20 ~~years of age or older.~~

21 *SEC. 5. Section 1923.8 is added to the Civil Code, to read:*

22 *1923.8. (a) In addition to any other obligation under law, any*  
23 *person who offers, sells, or arranges the sale of a reverse*  
24 *mortgage, as defined in Section 1923, owes to the prospective*  
25 *borrower a duty of honesty, good faith, and fair dealing.*

26 *(b) Any person who offers, sells, originates, or arranges the*  
27 *sale of a reverse mortgage shall provide the prospective borrower*  
28 *with a written checklist, to be signed by the prospective borrower*  
29 *and maintained by the lender, acknowledging that the borrower*  
30 *has considered the following:*

31 *(1) How age, life expectancy, or unexpected medical or other*  
32 *events that may require the prospective borrower to move out of*  
33 *the home earlier than anticipate may impact the total annual loan*  
34 *cost.*

35 *(2) The extent to which the prospective borrower's financial*  
36 *needs would be better met by options other than a reverse*  
37 *mortgage, including, but not limited to, less costly home equity*  
38 *lines of credit, property tax deferral programs, or governmental*  
39 *aid programs.*

1     (3) *The financial consequences of using reverse mortgage*  
2     *proceeds to purchase an annuity or other financial products.*

3     (4) *The effect of repayment of the loan on nonborrowing*  
4     *residents after all borrowers have died or permanently left the*  
5     *home.*

6     (5) *The borrower's or borrowers' ability to finance routine or*  
7     *catastrophic home repairs, especially if maintenance is a factor*  
8     *that may determine when the mortgage becomes payable.*

9     (6) *The impact that the reverse mortgage may have on the*  
10    *prospective borrowers tax obligations, eligibility for government*  
11    *assistance programs, and the effect that losing equity in the home*  
12    *will have on the borrower's or borrower's estate and heirs.*

13    (c) *If the lender has concerns as to the suitability of the reverse*  
14    *mortgage for the prospective borrower, based on the factors*  
15    *enumerated in subdivision (b) or any other reason, the lender shall*  
16    *submit to the borrower a written explanation enumerating the*  
17    *points of concern. The borrower shall sign, and the lender shall*  
18    *retain, a copy of the signed written explanation. Nothing in this*  
19    *subdivision shall imply that a lender has legal duty to deny a*  
20    *reverse mortgage for lack of suitability, so long as the prospective*  
21    *borrower is otherwise qualified under relevant state and federal*  
22    *law.*